

General Information Letter: Estimated tax payments made by partners included on composite return.

June 4, 1998

Dear:

This is in response to your fax dated June 3, 1998, in which you request a General Information Letter. Your letter contained questions involving a variety of tax fields. This letter will only contain an answer to the income tax question. The other questions will be answered by the corresponding areas of the department. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

We request that the 1997 estimated tax payments made by the nonresident partners are applied to The xxxxxxxn xxxxx xxxxx Illinois Composite Tax Return (Form IL-1023-C). We ask this request due to the administrative burden which would result if we had to file separate tax returns for approximately 300 partners to claim a refund for the estimated taxes paid. We believe that if we had to file separate tax returns for the estimated tax payments it would negate the purpose of filing the composite return.

When we extended our composite tax return we included the estimated tax payments (approximately \$950,000) as payments made for the composite return. At that time we were not aware of this issue based on the regulations or your response letter to our request. When we began preparing the return it came to our attention from the instructions to Form IL-1023-C.

In addition to the above request, we need guidance with another situation. One partner thought he would not be eligible for the composite return when we extended it. He filed a separate extension and paid approximately \$4,000. Upon completion of his tax returns we found he is eligible for the composite return. Can we include this nonresident partner and transfer the \$4,000 extension payment to the Group composite return?

Department Analysis

The authorization for composite returns can be found at 86 Illinois Administrative Code, Ch. I. §100.5100 pursuant to section 505 of the Illinois Income Tax Act ("IITA"). Individual nonresident partners may have their returns filed by the partnership; however, the regulations contemplate that the partnership will file the composite return and pay any required tax. The correct procedure is for the partnership to apply for permission to allow the nonresidents to claim a credit for the taxes paid on their individual returns. After being granted permission, the partnership may file the composite return and the partners may then claim the credit for taxes paid. See 86 Ill. Adm. Code §§ 100.5100(e) and 100.5160. The regulations do not contemplate a situation where the partners pay the tax and the partnership claims a credit for taxes paid by the parties. Accordingly, it is not possible to transfer previously paid funds from partner accounts to the partnership account.

Your second question concerns an individual who was not originally part of the composite return. You may include this person on the composite return; however, like the other partners, he must file the request a credit for monies previously paid.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian
Associate Attorney (Income Tax)